



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MTI - 175743

PRELIMINARY RECITALS

Pursuant to a petition filed on July 25, 2016, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Public Assistance Collection Unit regarding a tax intercept of overpayment of Medical Assistance (MA), a hearing was held on September 14, 2016, by telephone. Prior to the hearing, the Department of Health Services, Office of Inspector General (OIG), submitted a Motion to Dismiss to the Division of Hearings and Appeals (DHA).

The issue for determination is whether the DHA has jurisdiction to determine whether the agency is entitled to recoup benefit overpayments through a tax intercept based upon the petitioner's untimely appeal.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], OIG
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August of 2013, the petitioner moved to Tennessee but returned to Milwaukee by July 2014.
3. The agency did not receive notice from the petitioner that she had moved and the petitioner was unable to produce any documentary evidence that she had provided notice to the agency of same.
4. On August 29, 2014, the agency issued two overpayment notices to petitioner at her correct address in the total amount of \$3,159.64 due to the petitioner's failure to report having moved out of state/change of residence while still receiving medical assistance benefits from September 1, 2013 through May 31, 2014. Those notices advised the petitioner of her right to request a fair hearing within 45 days of the date of the notices.
5. Petitioner acknowledged learning about the overpayments when her medical bills were not paid by MA following a hospital stay in July 2014.
6. Dunning notices were sent to the petitioner, again at her correct address, on October 2, 2014, November 4, 2014 and December 2, 2014 notifying the petitioner of the overissuance of benefits.
7. Petitioner acknowledged receipt of the overpayment notices beginning in October 2014 but assumed that the matter was dismissed when she was subsequently granted health insurance.
8. The petitioner did not request a fair hearing with regard to the overpayments.
9. On May 15, 2015, the Department issued a Tax Intercept Notice to the petitioner. That notice advised the petitioner that:

You have a right to an administrative hearing under sections 49.85(4) and 227.44 of the Wisconsin Statutes if you dispute this debt...This will be your only opportunity to contest this intended setoff against your taxes, unless you later claim that the certified amount has been partially or fully paid or otherwise discharged, since the date of this notice.

If you decide you want a hearing, you must make your request within 30 days of the date of this notice, by sending a copy of this notice and your statement of why you do not owe the amount shown above to:

DIVISION OF HEARINGS AND APPEALS
P.O. Box 7875
Madison, WI 53707-7875

10. Petitioner filed an appeal with the Division of Hearings and Appeals on July 25, 2016.

DISCUSSION

An administrative law judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. Wis. Admin. Code HA 3.05(4)(e). An appeal of a negative action by a county agency or the Department concerning a state tax refund intercept must be filed within 30 days of the date of the notice of the tax intercept pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's appeal of the tax intercept notice was filed with the Division of Hearings and Appeals on July 25, 2016, which is over one year after the date of the May 15, 2015 tax intercept notice. The petitioner did not dispute having timely received the May 15, 2015 tax intercept notice.

The Department is required to recover all overpayments of public assistance benefits. *See* 45 C.F.R. § 233.20(a)(13)(I) (...Overpayment means a financial assistance payment received by or for an assistance

unit for the payment month which exceeds the amount for which that unit was eligible...The State must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19...); 7 C.F.R. § 273.18(a) (“...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive...), Wis. Stat. § 49.125(1).

The Department presented a clear case that established that the petitioner’s appeal of her May 15, 2015 tax intercept was untimely. The evidence established that petitioner was sent many notices of her overpayments followed by the May 15, 2015 tax intercept notice, which were all sent to the correct address of record. The petitioner was unable to credibly refute the Department’s testimony or exhibits. The petitioner asserted that she has provided the county agency a letter in July 2013 informing them that she was moving to Tennessee but she was unable to provide any documentary evidence of the letter. Further, the petitioner’s excuse for not filing an appeal with regard to the 2014 overpayment notices or the 2015 tax intercept notice because she assumed it was dismissed is not credible given the numerous notices she had received stating otherwise.

The Department correctly notified the petitioner of its intent to intercept her state income tax refund as well as informed her of her right to appeal. The petitioner failed to timely request a hearing on the underlying overpayment issue despite receiving multiple prior notices and having plenty of opportunity to request a hearing on the merits of the underlying overpayment going back to August 2014. As a result, the only issues which petitioner could have contested in the present hearing, even if her tax intercept appeal had been timely, would have been: 1) whether the amount to be intercepted differs from the overpayment amount, or 2) whether the petitioner has not been credited with amounts already paid on the overpayment. The petitioner was unable to refute that the amount of the tax intercept amount was \$3,159.64 as of the September 14, 2016 hearing date. Accordingly, the agency’s action stands. The Department may utilize tax refund interception as a means of recovering the overpayment. *See*, Wis. Stat. §49.85.

CONCLUSIONS OF LAW

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed a May 15, 2015 tax intercept against the petitioner’s tax refunds, as the appeal is untimely.
2. The amount of petitioner’s MA overpayment was \$3,159.64.
3. The Department may certify the sum of \$3,159.64 as an overpayment amount due and may continue to proceed with the action to intercept the petitioner's tax refund.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of September, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 16, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability